

General Terms and Conditions of Business

As per: 31.12.2016

§ 1 General remarks

1. These Terms and Conditions of Business apply to all contracts relating to deliveries and services by elka-Holzwerke GmbH in ongoing and future business relationships. They also apply for consulting services that are not the subject of a separate consulting agreement.

2. In addition to these conditions, the customary practices in the timber trade, in particular the "Lake Tegern rules", in their respectively valid version with all appendices and notes, apply for all timber deliveries, provided that they do not conflict with these conditions.

3. The law of the Federal Republic of Germany alone applies, under the exclusion of the UN Convention on Contracts for the International Sale of Goods. As this choice of law towards consumers may not, however, have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable, a most favourable tax assessment pursuant to Article 6 II Rome I-V0 Regulation may be performed.

4. Deviating conditions - in particular the customer's Conditions of Purchase - only become part of the contract when they have been explicitly accepted by elka-Holzwerke GmbH in writing.

5. The customer agrees that elka-Holzwerke GmbH may process the customer's company-related and personal data pursuant to the provisions of the Federal Data Protection Act (BDSG).

§ 2 Offers – Conclusion of contract – Prices

1. Offers from elka-Holzwerke GmbH are non-binding and are subject to revocation until conclusion of contract. Offers are subject to goods being unsold.

2. Unless otherwise agreed, the prices are ex factory or ex warehouse and exclude packaging, carriage and VAT.

3. If carriage paid delivery is agreed, shipping is at the customer's risk.

4. elka-Holzwerke GmbH is entitled to increase prices for services in a commensurate manner if the service is to be provided more than four months after conclusion of contract. The increase is limited to the degree in which the increase in wage and material costs at elka-Holzwerke GmbH in manufacturing and delivery since the conclusion of the contract has impacted on the service price on a pro rata basis, however, up to a maximum of 1% of the agreed price per month since the conclusion of contract. The costs are to be itemised at the customer's request. This entitlement also already applies vis-à-vis merchants in the case of services that are to be performed more than six weeks after the conclusion of contract.

§ 3 Delivery and transfer of risk

1. Unless otherwise stated, delivery times and deadlines are non-binding. Irrespective of this, delivery times and deadlines stipulated to merchants are subject to the condition that elka-Holzwerke GmbH itself is supplied with the merchandise on time, unless elka-Holzwerke GmbH could have complied with the promised deadline irrespective. Non-compliance entitles the customer to file warranty claims only after it has granted elka-Holzwerke GmbH an appropriate extension.

2. Delivery and performance deadlines are extended by the period of a delay in delivery or performance due to force majeure or industrial action. elka-Holzwerke GmbH shall notify the customer of the start and end of such a hindrance without delay. Both parties are entitled to withdraw from the contract if its execution is unreasonable due to the delay or due to the causes or consequences of the delay. Both parties undertake to inform the other contractual partner at the latter's request within an appropriate period and indicating reasons as to whether they intend to withdraw from the contract.

3. elka-Holzwerke GmbH is only legally responsible for delays in delivery or performance where it or its agents of vicarious liability are culpable, but not in cases where its preliminary suppliers are at fault. However, upon demand, it undertakes to cede to the customer the claims to which it is entitled vis-à-vis the preliminary suppliers as a result of the delay but not in excess of the damage or loss incurred by the customer.

4. Partial deliveries are permissible to a reasonable extent and are to be accepted by the customer.

5. Transport insurance will only be concluded at the customer's explicit request and at the latter's expense.

6. If, at the customer's explicit request, delivery is effected with special packaging or by special means of transport, the additional costs incurred will be invoiced separately. Packaging material will only be taken back by prior arrangement.

7. The risk shall also be transferred to the customer with carriage paid delivery if the delivery has been dispatched or has been collected. Delivery shall be carried out at the best discretion of elka-Holzwerke GmbH.

Delivery free of charge to building site or free of charge to warehouse implies delivery not including unloading and under the condition that the access road is accessible for a heavy truck and trailer. Waiting times will be invoiced separately. If the vehicle leaves the accessible road at the customer's or its client's instruction, the customer is liable for any resulting defects and damage.

§ 4 Conditions of payment

1. Invoices will be drawn up for each consignment dated with the date of dispatch. This also applies for agreed partial deliveries.

2. Unless agreed otherwise, the purchase price in Euros must be paid within 30 calendar days after the invoice date without deduction, or after 14 days with 2% discount, provided that the customer account has no balance due. A discount may only be made on value of the merchandise but not on the carriage, labour or packaging. All costs for the transfer of the payment sum to the seller shall be borne by the buyer.

3. Representatives are only authorised to accept payments if they have been granted a special power of attorney to do so. Bills of exchange will only be accepted by special arrangement with elka-Holzwerke GmbH and only on account of payment, taking into account all the costs incurred. In the case of cheques, the payment is deemed to have been made when the cheque has been finally credited to the account. elka-Holzwerke GmbH does not assume any liability for bills of exchange, cheques or other documents given as a means of payment being submitted in a timely manner. Recourse against the customer does not necessitate the protest of the bill of exchange.

4. In the event of payment arrears, cheque or bill of exchange protest, elka-Holzwerke GmbH is entitled to make further deliveries conditional on advance payment, to call in all outstanding invoice amounts and to demand payment in cash or the provision of securities in return for surrender of all bills of exchange and cheques taken as means of payment.

5. In the case of justified notifications of defects, payments by the customer may only be retained in an appropriate ratio to the material damage incurred, with the exception of cases in which the customer is not obliged to accept a partial delivery of the defect-free part pursuant to Section 3 Clause 4. The offsetting of counter claims is only permissible with undisputed claims or those established in a court of law.

§ 5 Condition – Warranty – Notification of defect - Liability

1. Wood is a natural product. Its natural properties, variations and features must therefore be kept in mind at all times. In particular, the biological, physical and chemical properties must be taken into account when it is bought, processed and used. The bandwidth of natural colour, structural and other variations within a type of wood is one of the properties of the natural product that is wood and does not represent any grounds for complaint or liability.

2. Only the manufacturer's product description is deemed to be agreed for the condition of the merchandise. The manufacturer's public statements, claims or advertising, however, do not represent any contractually valid information with regard to the quality of the merchandise.

3. An agreed wood moisture is deemed to be an approximate target moisture, taking into account normal tolerances. When technical drying is involved, the agreed wood moisture refers to the condition at the point in time when the drying chamber is emptied.

4. In the event of justified notifications of defects, elka-Holzwerke GmbH may carry out subsequent improvement or deliver a replacement, at its discretion. Delivery quantities of up to 10% above or below the quantity of merchandise ordered do not represent a material defect.

5. If the customer is a merchant, warranty claims expire 12 months from the transfer of risk. This does not apply to claims relating to willful action or claims for contracts relating to building structures.

6. Section 6 applies for compensation claims.

7. The return of merchandise subject to a justified complaint is to be conducted by elka-Holzwerke GmbH own means of transport. If the customer selects another type of transport for the product's return, the costs for this will be borne by the customer.

8. The seller is only liable for the absence of assured properties if the assurance aims to protect the buyer particularly against the consequential damage incurred as a result of the absence of these properties. The mere reference to DIN or EN standards does not guarantee their realisation in the product's properties.

§ 6 Restriction of liability – Compensation

1. A compensation claims are excluded in the event of mildly negligent breaches of duty. Compensation claims are restricted to the foreseeable damage or loss typical of this type of contract.

2. Clause 1 does not apply in the event of death or injury to body or health.

§ 7 Retention of title

1. All delivered items (goods subject to retention of title) remain the property of elka-Holzwerke GmbH until all claims against the buyer from the ongoing business relationship, including from contracts concluded concurrently or at a later stage, have been settled. This also applies if individual or all claims of the seller have been included in a current invoice and if the balance has been determined and accepted. If the value of the merchandise subject to retention of title exceeds the total of all due receivables by at least 30%, elka-Holzwerke GmbH must surrender the merchandise subject to retention of title to the customer when asked to do so up to the amount that exceeds the total.

2. If the merchandise subject to retention of title is processed or finished, elka-Holzwerke GmbH shall acquire co-ownership of the new item in the ratio of the invoice value of the merchandise subject to retention of title to the other finished merchandise at the time of finishing. The new items developed as a result of the processing and finishing are, in turn, merchandise subject to retention of title in this sense.

3. If the merchandise delivered is combined with a third party's movable item in such a way that it becomes a fundamental part of the other item which is to be seen as the primary item, the customer shall already assign to elka-Holzwerke GmbH the claim for compensation against the third party to the amount of the value of the merchandise subject to retention of title. elka-Holzwerke GmbH hereby accepts this assignment in advance. elka-Holzwerke GmbH is only permitted to disclose the assignment to third parties if the customer is in arrears in payment vis-à-vis elka-Holzwerke GmbH.

4. In the case of seizures, requisitions or other injunctions or interventions, the customer must inform elka-Holzwerke GmbH immediately and in full and take all action required in agreement with elka-Holzwerke GmbH to avert the threat. The customer is obligated to compensate elka-Holzwerke GmbH for all damages and costs incurred as a result of intervention measures against third party access, including court costs and attorney fees. If the customer is in arrears with payment, elka-Holzwerke GmbH is entitled, without giving any extension, to end the customer's right of possession by a unilateral declaration and to demand the surrender of the material that has not been processed. This does not constitute a withdrawal from the contract as a whole. In the event of payments being suspended and/or excess indebtedness, the debtor's right to dispose of the merchandise subject to retention of title expires unless the recipient of the customer's service confirms to elka-Holzwerke GmbH in writing that it has noted the assignment in advance pursuant to Clause 3.

5. If the customer is in arrears with payment for longer than one month, the customer is obliged to immediately grant elka-Holzwerke GmbH or its agent access to the merchandise subject to retention of title in order to determine its stocks, value and availability. This does not affect additional rights.

§ 8 Place of fulfilment - Place of jurisdiction

Morbach/Hunsrück is deemed to be the place of fulfilment vis-à-vis merchants. The place of jurisdiction is D-54470 Bernkastel-Kues.

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§ 9 Severability clause

If a clause should breach a statutory prohibition or be or become invalid under the law for other reasons, this shall not affect the validity of the remaining provisions. Should a provision prove to be invalid, terms that come closest to the commercial interests and the presumed will of the contractual parties, taking into consideration the remaining contractual provisions, are deemed to have been agreed. The same applies for any lacuna in the contract. Both contractual parties undertake at the request of the other contractual partner to fully collaborate in these cases in the formulation of a replacement provision.

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